

**(ii) Decision on the "The United Nations
Conference on Environment and Development:
Follow up"**

(Adopted on 18.4.98)

**The Asian- African Legal Consultative Committee at its Thirty-
seventh Session**

Having considered Doc. No. AALCC/XXXVII /New Delhi 198/
S.12 on matters concerning the follow-up to the United Nations Conference
on Environment and Development held in Rio in June 1992;

Taking note of the outcome of the Special Session of the General
Assembly for the Purpose of an Overall Review and Appraisal of the
Implementation of Agenda 21;

1. **Urges** the Member Governments which have not already
done so to consider ratifying or acceding to the Framework Convention on
Climate Change, Convention on Biological Diversity and the Convention to
Combat Desertification and other relevant environmental conventions;

2. **Directs** the Secretary General to organize a workshop in the
field of Environmental Law in cooperation with the United Nations Environment
Programme and other international/ regional organizations and in collaboration
with the United Nations Environment Programme to publish a Handbook of
Environmental Law for AALCC' Member States, for their practical use in the
field of environment and development;

3. **Appreciates** the voluntary contributions made by the
Government of Saudi Arabia and Myanmar to the AALCC's Special Fund
on Environment. and urges Member Governments to make voluntary
contributions to that Fund to enable the Secretariat to play an effective role in
raising issues relating to emerging norms and principles of environmental law
and examining them from the perspective of Member States; and

4. **Directs** the Secretariat to continue to monitor the progress in

in environmental law matters, particularly towards the implementation of
Agenda 21, and the follow-up work to the UN Conventions on Climate Change,
Biological Diversity. and Desertification and submit a report thereon at its
thirty-eighth Session.

(iii) Secretariat Study : United Nations Conference on Environment and Development : Special Session of The General Assembly For The Purpose of An Overall Review And Appraisal of The Implementation of Agenda 21.

The General Assembly by its resolution 44/228 of 22 December 1989 had decided to convene a United Nations Conference on Environment and Development (UNCED). The UNCED was held at Rio de Janeiro from 3 to 14 June 1992. It resulted in the adoption of the Rio Declaration on Environment and Development,¹ Agenda 21² and the Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests.³ The General Assembly in its resolution 47/190 of 22 December, 1992 while endorsing the Report of the Rio Conference also decided to convene a special session for the Purpose of an Overall Review and Appraisal of the Implementation of Agenda 21, not later than 1997.

The General Assembly further decided⁴ that the special session should be convened at the highest possible level of participation and also determined the organizational modalities for the preparation for the special session, including the role of the Commission on Sustainable Development (CSD) and other relevant organizations of the United Nations System. The Ad Hoc Open-ended Inter-sessional Working Group of the UN Commission on Sustainable Development (CSD) which met in New York from 24 February to 7 March 1997 focused its attention on the format and contents of the documents for consideration at the special session. There were differences in key areas between the developed and developing countries concerning the structure of the draft on the "proposed outcome of the special session". The CSD met again prior to the convening of special session to sort out the divergent views.

¹ Report of UNCED. UN Doc.No.A/CONF. 151/26/Rev. 1 (Vol.I and Vol.I)Corr. 1, Vol. 11, Vol.III and Vol. III)Corr.

² Ibid, Annex II.

³ Ibid., Annex III.

⁴ General Assembly resolutions 50/113 of 20 December 1995 and 51/181 of 16 Dec.

AN OVERVIEW OF THE SPECIAL SESSION

It was against this backdrop that the nineteenth special session of the General Assembly was held at the United Nations Headquarters from 23 to 27 June 1997. Also known as Earth Summit+5, it was attended by 55 Heads of States or Governments 178 Ministers of various rank, executive heads and high level officials of a large number of international organizations, both from within and outside the United Nations system and representatives of a large number of non-governmental organizations.

The Special Session unable to reach an agreement on adoption of a declaration, adopted a Programme for the Further Implementation of Agenda 21. This Programme which would be a blue print for implementation of Agenda 21 until the next review in 2002, contains: (a) a statement of commitment; (b) an assessment of the progress made since UNCED; (c) implementation in areas requiring urgent action; and (d) financial mechanism and international institutional arrangements.

A. Statement Commitment

The Statement recognized that the UNCED was a landmark event which launched a new global partnership for sustainable development, founded on a global consensus and political commitment at the highest political level. It "re-affirmed that Agenda 21 adopted at Rio remained the fundamental programme of action for achieving sustainable development, along with all the Principles contained in the Rio Declaration on Environment and Development and the Forestry Principles".

B. Assessment of Progress made since UNCED

It was acknowledged that the global environment has continued to deteriorate since Rio, due to rising levels of green house gas emissions, toxic pollution, solid waste and the continuous depletion of renewable resources such as fresh water, forests, top soil and marine fish stocks. Although economic growth on account of globalization, was discernible it was felt, that the gap

between the rich and the poor was ever increasing.

As regards the significant achievements since UNCED the assessment noted the entry into force of the United Nations Framework Convention on Climate Change (UNFCCC), the UN Convention on Biological Diversity, the UN Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa; the conclusion of an Agreement on Straddling and Migratory Fish Stocks; the adoption of the Programme of Action for the Sustainable Development of Small Island Developing States and the elaboration of the Global Programme of Action for the Protection of the Marine Environment from Land-based Activities; and the entry into force of the United Nations Convention on the Law of the Sea. It was stressed that the implementation of the commitments, provided in these instruments by all States' Parties was of fundamental importance for achieving sustainable development.

It was recognized that some progress had been made in incorporating the principles contained in the Rio Declaration on Environment and Development, including the principle of common but differentiated responsibilities, which embodies the concept and basis for international partnership; the precautionary principle; the polluter pays principle; and the principle of environmental impact assessment, in a number of national and international environment instruments.

C. Implementation in areas requiring urgent action

Emphasizing a comprehensive approach to achieve sustainable development it was stressed that all sectors covered by Agenda 21 are important and deserve attention by the international community on an equal footing. Recommendations were made on each of the sectors taking into account the need for international co-operation in support of national efforts, within the content of the principles of UNCED, including inter alia, the principle of common but differentiated responsibilities. It was however agreed that these recommendations would not in any way prejudice the work accomplished under existing legally binding conventions. The important sectors listed in the assessment inter alia, include: (i) fresh water; (ii) climate change (atmosphere);

(iii) forests; (iv) desertification; (v) oceans and seas; (vi) energy; (vii) small island developing states; and (viii) biological diversity.

D. Financial Resources and international institutional arrangements

It was recognized that financial resources and mechanisms play a key role in the implementation of Agenda 21. The need for developing more concessional mechanisms of funding through multilateral financial institutions, in order to fully implement the sustainable development objectives contained in Agenda 21, was also emphasized. Donor countries were urged to engage in providing "new and additional resources", through satisfactory replenishment of the GEF. Recognizing, that private capital could be a major tool for economic growth in developing countries, it was suggested that Governments should aim at providing economic stability, open trade and investment policies and a favourable legal framework for encouraging higher levels of foreign private investment.

It was reaffirmed that developing countries need greater access to environmentally sound technologies, if they are to meet the obligations agreed at UNCED and other relevant conventions. Stressing upon the need for urgent fulfillment of all UNCED commitments by developed countries, it was agreed that such technologies should be transferred on a preferential basis. In this context, it was felt that UN bodies and other mechanisms, such as Technical Co-operation among Developing Countries (TCDC), Economic Co-operation among Developing Countries (ECDC), UNCTAD, UNIDO, UNEP and other regional Commissions, could provide technical expertise.

Renewed commitments and support from the international community to support national efforts for capacity building in developing countries and countries with economies in transition was considered essential. In this regard reference was made to the Capacity 21 programme of the UNDP, which could provide assistance for infrastructural development, using local talent, on the basis of a participatory approach.

It was also recommended that environmental policies should be integrated with appropriate legal and regulatory policies and judicial and administrative enforcement mechanisms at the national, state, provincial and local levels. Also, mindful of the provisions of Chapter 39, paragraph 1 of Agenda 21, continued efforts towards the progressive development and when appropriate codification of international law related to sustainable development was considered necessary.

It was affirmed that the institutional framework outlined in Chapter 38 of Agenda 21, will continue to be fully relevant in the period after the special session as there was need for greater coherence in the functioning of various intergovernmental organizations and processes, to facilitate better policy co-ordination.

Follow-Up Work Of The Special Session

As regards the follow-up action on the decisions and recommendations of the nineteenth special session, the Economic and Social Council at its Substantive session in July 1997 approved the "Programme of Work of the CSD for the period 1998-2002" and invited the CSD to adjust its future methods in accordance with "paragraphs 132 and 133" of the Programme for the Further Implementation of Agenda 21. The Council also established, under the aegis of the CSD, an Intergovernmental Forum on Forests which would report to the CSD. at its eighth session in the year 2000.

The General Assembly at its 52nd Session considered the Report of the Special Session including the Programme for the further implementation of Agenda 21. It considered that along with the already existing framework provided in Chapter 38 of Agenda 21, it was necessary to strengthen the Administrative Committee on Co-ordination (ACC) and the Inter-Agency Committee on Sustainable Development and its system of task managers, with a view to further enhancing system-wide inter-sectoral co-operation and coordination for the implementation of Agenda 21.

To facilitate national implementation of national Agenda 21, the General Assembly also stressed that all organizations and programmes of the United Nations should strengthen within their area of expertise and jointly or individually, extend support for implementation of Agenda 21.

UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE (UNFCCC)

The United Nations Framework Convention on Climate, Change which was adopted in May 1992 was opened for signature at the Rio Conference from 4 to 14 June 1992 and thereafter at the United Nations Headquarters until 19 June 1993. It came into force on 21 March 1994. As of 30 September 1997, there are 170 States parties to the Convention.⁵

The first Conference of Parties (COP-1) met in Berlin from 28 March to 4 April, 1995. Among its main decisions included: (a) the establishment of a Ad-hoc Group on Berlin Mandate (AGBM) entrusted to negotiate a protocol or any other legal instrument containing additional commitments of Annex I Parties provided in Article 4.2; (b) initiation of "Joint Activities" or activities implemented jointly (AIJ) on a pilot basis; (c) designation of the Global Environmental Facility (GEF) as an interim financial mechanism; and (d) constituting a multilateral consultative process, pursuant to Article 13 of the UNFCCC.

At the second Conference of Parties (COP-2) which was held in Geneva from 8 to 19 July 1997, discussions continued on the mandate of AGBM and its work towards substantive negotiation, following 70 proposals received by the AGBM Secretariat. An important event during the Conference

⁵ The AALCC Member States that are Parties to this Convention are: Bahrain, Bangladesh, Botswana, China, Egypt, Gambia, Ghana, India, Indonesia, Islamic Republic of Iran, Japan, Jordan, Kenya, Democratic People's Republic of Korea, Republic of Korea, Kuwait, Malaysia, Mauritius, Mongolia, Myanmar, Nepal, Nigeria, Oman, Pakistan, Philippines, Qatar, Saudi Arabia, Senegal, Sri Lanka, Sudan, Syrian Arab Republic, Tanzania, Thailand, Uganda, United Arab Emirates and Republic of Yemen.

AGBM and its work towards substantive negotiation, following 70 proposals received by the AGBM Secretariat. An important event during the Conference was adoption of a Ministerial Declaration which highlighted the political importance of the implementation of the objectives and commitments provided in the Convention. Despite dissatisfaction expressed by some Ministers and other Heads of delegations; the declaration; (1) reaffirmed the over reaching importance of the principles of equity, common but differentiated responsibilities and the precautionary approach in mitigating the effects of climate change; (ii) endorsed the Second Assessment Report of the IPCC as currently, the most comprehensive and authoritative assessment of the science of climate change although some uncertainties do exist; (iii) called upon Annex-I Parties to strengthen their commitments by implementing their national policies and measures and making additional efforts to stabilize their emissions of greenhouse gases; (iv) instructed the representatives to accelerate negotiations on the text of a legally binding protocol or any other legal instrument to be completed for adoption at COP-3; (v) affirmed quantified legally binding emission limitations (QELROS) objectives and significant overall reductions within specified time frames such as 2005, 2010 and 2020 with respect to their anthropogenic emissions by sources and remarks by sinks of greenhouse gases; (vi) welcomed the efforts of the developing country Parties in implementing the Convention and called upon Annex-11 Parties to fulfil their commitments to provide environmentally sound and benign technologies towards meeting the incremental costs; and (vii) called upon the GEF to provide timely support to developing country Parties and initiate work towards a full replenishment in 1997.

During the inter-sessional period, the Subsidiary bodies met four times. The Subsidiary Body for Implementation received a number of first and second national communications from Annex-1 Parties, as well as the financial mechanism of the UNFCCC. The Subsidiary Body for Scientific and Technological Advice (SBSTA) defined its co-operation with other relevant international organisation, in particular, the IPCC. SBSTA considered a uniform reporting pattern for AIJ projects. The Ad hoc Group on Article 13 considered a number of proposals on a multilateral consultative process.

COP-3

The third Conference of Parties (COP-3) met in Kyoto, Japan from 1-10 December, 1997. Among the issues before the Conference were the drawing up of an international framework by way of a protocol or any other legal instrument, containing additional commitments by Annex-1 Parties, beyond the period 2000 and the quantified emissions limitation and reduction objectives (QELROS) of a 20 percent reduction in carbon dioxide emission by 2005 A.D. to 1990 levels, as proposed by the Alliance of Small Island States (AOSIS). After ten days of negotiations, especially on the contentious issue of QELROS, a Protocol was adopted on 10 December 1997.⁶

The main elements of the Protocol include: (i) commitment towards QELROS (Article 3); (ii) a commitment of five percent reduction in the time frame of 2008 to 2012; (iii) commitment towards AIJ; (iv) trading of emissions targets\quotas amongst Annex-1 Parties; (v) voluntary opt-in mechanism; (vi) new additional resources and transfer of technologies; (vii) setting up of a clean development fund; and (viii) methodologies for estimation of anthropogenic emissions.

QELROS

As regards quantified emission limitation and reductions (QELROS), Article 2 of the Protocol provides that each Annex-1 Party shall strive to promote sustainable development. Towards this end, the Party shall implement and elaborate policies and measures in accordance with national circumstances such as: enhancement of energy efficiency in relevant sectors; protection and enhancement of sinks and reservoirs of greenhouse gases (GHG's) not controlled by the Montreal Protocol; promotion of forestry policies and sustainable forms of agriculture; promotion of R&D and use of renewable forms of energy and environmentally sound technologies; and progressive reduction or phasing out of market imperfections, fiscal

⁶ FCCC/CP/1997/CRP.4.

exemptions or subsidies in GHG's emitting sector that run counter to the objectives of the UNFCCC.

Article 2, paragraph 3 further provides that Annex 1 Parties shall implement the above mentioned policies, bearing in mind the adverse effects of climate change on international trade, environmental and socioeconomic impact on other Parties, especially developing country Parties.

Commitment Period (2008-2012)

Article 3 of the Protocol provides for a commitment period wherein Annex-II Parties would reduce their collective aggregate anthropogenic carbon dioxide equivalent emissions of carbon dioxide, methane and nitrous oxide, listed in Annex A, by five percent in the period 2008-2012. Annex-I Parties would also individually or Jointly ensure their "assigned amounts pursuant to Annex of the Protocol" as calculated in accordance with paragraph 3 of Article 3.

Article 3 further stipulates that the Conference of Parties (COP-4) to be held in Buenos Aires in 1999 could consider adoption of an annex to this Protocol which could establish emission limitation and reduction commitments for Annex-I Parties with respect to hydro fluoro-carbons, perfluoro carbons and sulphur hexafluoride. Besides these commitments, the net changes of GHG's from sources and removals by sinks, resulting from human induced land-use change and forestry activities since 1990, which will be measured as verifiable changes in stocks in each commitment period which would be used to meet the commitments mentioned in Article 3, by the Annex-1 Parties.

Activities Implemented Jointly (AIJ)

Article 4 of the Protocol provides for joint implementation or AIJ wherein the Annex-1 Parties have agreed to jointly fulfill their commitments under Article 3 of the Protocol. Such a commitment would be deemed to have met those commitments provided their total combined aggregate anthropogenic carbon dioxide equivalent emissions of GHG's listed in Annex

A do not exceed their assigned amounts in Annex B. It further stipulates that all Parties desirous of such AIJ should notify the Secretariat of their terms of agreement on the date of deposit of their instruments of ratification, acceptance, approval or accession.

When the Parties undertake AIJ within the framework of their regional economic integration organization any alteration in the composition of the organization would not affect their individual commitments under the Protocol. In the event of the regional economic organization itself being a Party to the Protocol, each member of the organization individually and together with the regional economic integration organization in accordance with Article 25, would in case of failure to achieve the total combined level of emissions reductions, be responsible for its level of emissions, as provided in Article 4.

Trading Of Emissions Reduction Targets\Quotas

Article 6 provides that the Conference of Parties under the UNFCCC, would serve as the meeting of Parties to the Protocol. Such a COP of the Protocol, at its first session to be convened after the date of its entry into force, shall decide upon the modalities, rules and guidelines for an international framework for emissions trading. Annex-I Parties can transfer their assigned amount to any other Annex-I Party as provided in Article 3 of the Protocol. Furthermore a Party may also authorize "legal entities", to participate under its responsibility for transfer or acquisition of any assigned amount. In the event of excess emissions by an Annex-I Party in any commitment period such amount may be acquired, but not transferred. All emission trading shall be supplemental in nature to domestic actions required of Parties under Article 3 of the Protocol.

Voluntary Opt-in Mechanism

Article 10 of the Protocol states that "Any Signatory Party this Protocol not included in Annex-I may at any time, notify the depository that it has opted to be bound by this Article". The party so choosing to be included in Annex-I will have to notify : (i) its intention with the support of an inventory of GHG